

§ 220.804a

the first principal payment shall be calculated in accordance with the amortization provisions without taking into account delinquent payments or prepayments.

§ 220.804a Mortgagee's late charge.

Mortgage insurance premiums which are paid to the Commissioner more than 15 days after the billing date or due date, whichever is later, shall include a late charge of 4 percent of the amount of the payment due, except that no late charge shall be required with respect to any case for which HUD fails to render a proper billing to the mortgagee.

[43 FR 60154, Dec. 26, 1978]

§ 220.805 Termination of insurance.

(a) *Prepayment in full.* The contract of insurance shall be terminated if the loan is paid in full prior to its maturity. Notice of the prepayment shall be given to the Commissioner, on a form prescribed by the Commissioner, within 30 days from the date of the prepayment. The insurance termination shall become effective as of the date of the prepayment.

(b) *Voluntary termination.* The contract of insurance shall be voluntarily terminated upon receipt by the Commissioner of a written request, on a form prescribed by the Commissioner, by the borrower and the lender for such termination, accompanied by a submission of the original credit instrument for cancellation of the insurance endorsement and the remittance of all sums to which the Commissioner is entitled. The termination shall become effective as of the date these requirements are met.

§ 220.806 Pro rata refund of insurance premium.

Upon termination of loan insurance contract by a payment in full or by a voluntary termination, the Commissioner shall refund to the lender for the account of the borrower an amount equal to the pro rata portion of the current annual loan insurance premium theretofore paid which is applicable to the portion of the year subsequent to the date of the prepayment or the effective date of the voluntary termination of the contract of insurance.

24 CFR Ch. II (4-1-03 Edition)

§ 220.810 Definition of default.

(a) If the borrower fails to make any payments due under or provided to be paid by the terms of the note or security instrument and such default continues for a period of 30 days, the note or security instrument shall be considered in default for the purposes of §§ 220.800 *et seq.*

(b) The failure to perform any other covenant under the note or security instrument shall be considered a default, provided the lender because of such default, has exercised its right under the note or security instrument and accelerated the debt.

(c) If such defaults as defined in paragraphs (a) and (b) of this section continue for a period of 30 days, the lender shall be entitled to receive the benefits of insurance hereinafter provided.

§ 220.811 Date of default.

For the purposes of §§ 220.800 *et seq.*, the date of default shall be considered as:

(a) The date of the first uncorrected failure to perform a covenant or obligation under the note or security instrument; or

(b) The date of the first failure to make a monthly payment which subsequent payments by the borrower are insufficient to cover when applied to the overdue monthly payments in the order in which they became due.

§ 220.812 Notice of default.

(a) If the default as defined in § 220.810 is not cured within the 30 day grace period, the lender shall, within 30 days thereafter, notify the Commissioner in writing of such default.

(b) The lender shall give notice in writing to the Commissioner of the failure of the borrower to comply with any covenant or obligation under the security instrument or note regardless of the fact the lender may not have elected to accelerate the debt.

§ 220.813 Commissioner's right to require acceleration.

Upon receipt of notice of the failure of the borrower to comply with any covenant or obligation under the security instrument or note, or otherwise being apprised thereof, the Commissioner reserves the right to require the

lender to accelerate payment of the outstanding principal balance due in order to protect the interests of the Federal Housing Commissioner.

§ 220.814 Election of action.

Where a real estate mortgage, deed of trust, conditional sales contract, chattel mortgage, lien, judgment, or any other security device has been used to secure the payment of a loan made under the provisions of this section, the lender may not, except with the approval of the Commissioner, both proceed against such security and also make claim under its contract of insurance, but shall elect which method it desires to pursue.

§ 220.820 Maximum claim period.

Notice of intention to file claim on a form prescribed by the Commissioner shall be filed within 45 days after the lender becomes eligible for the benefits of the loan insurance, or within such later time as may be agreed upon by the Commissioner in writing.

§ 220.821 Items to be filed on submitting claim.

Within 30 days after the filing of the notice of intention to file claim, or within such further period as may be agreed upon by the Commissioner in writing, the lender shall file with the Commissioner:

- (a) The fiscal data pertaining to the loan transaction;
- (b) Receipts covering all disbursements as required by the fiscal data form;
- (c) The original note and any security instrument or instruments which shall be assigned to the Commissioner without recourse or warranty, except that the lender must warrant that no act or omission of the lender has impaired the validity and priority of such security instrument or instruments, that the security instrument or instruments are prior to all mechanics' and materialmen's liens filed of record subsequent to the recording of such security instrument or instruments regardless of whether such liens attached prior to such recording date, and prior to all liens and encumbrances which may have attached or defects which may have arisen subsequent to the re-

coding of such security instrument or instruments, except such liens or other matters as may be approved by the Commissioner, that the amount stated in the instrument of assignment is actually due and owing under the security instrument or instruments, that there are no offsets or counter claims thereto, and that the lender has a good right to assign such note and security instrument or instruments;

(d) All hazard insurance policies held on property serving as security for the loan, together with a copy of the lender's notification to the carrier authorizing the amendment of the loss payable clause substituting the Commissioner as the holder of the security instrument;

(e) The assignment to the Commissioner of all rights and interests arising under the note and security instrument or instruments so in default, and all claims of the lender against the borrower or others arising out of the loan transaction;

(f) All policies of title or other insurance or surety bonds, or other guarantees and any and all claims thereunder; including evidence satisfactory to the Commissioner that the original title coverage has been extended to include the assignment of the note and security instrument or instruments to the Commissioner.

(g) Any property held by the lender or its agents or to which it is entitled and, if payment is requested in debentures, any cash held by the lender or its agents or to which it is entitled, including deposits made for the account of the borrower, and which have not been applied in reduction of the principal of the mortgage indebtedness;

(h) All records, ledger cards, documents, books, papers and accounts relating to the loan transaction;

(i) Any additional information or data which the Commissioner may require.

§ 220.822 Claim computation; items included.

(a) *Assignment of loan.* Upon an acceptable assignment of the note and security instrument, the Commissioner shall pay the claim of the lender in an amount equal to the unpaid principal balance of the loan plus: